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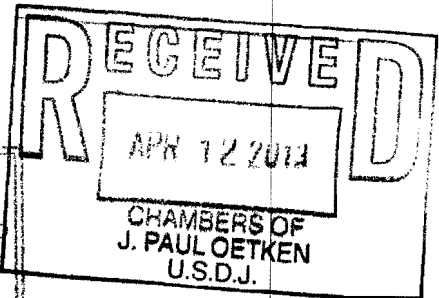
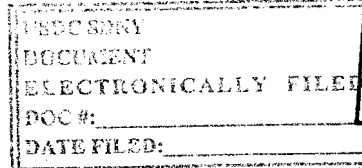
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April 12, 2013

## BY HAND

The Honorable J. Paul Oetken  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2101  
New York, NY 10007



MAY 06 2013

The Clerk of Court is Directed to:

☒ Term motion (doc. #     )  
☒ Doc. and File As: Letter

Re: Wells Fargo Bank, N.A., as Trustee v. Bank of America, N.A. v. Fidelity Nat'l Title Ins. Co., 1:11-cv-04062 (JPO)

Dear Judge Oetken:

This firm represents Third-Party Plaintiff Bank of America, N.A. ("Bank of America") in the above-referenced action. We write solely on behalf of Bank of America and non-party ColFin MF5 Funding, LLC ("Colony") in regard to the Court's Order of April 1, 2013 requiring the parties to submit a scheduling proposal for the next phase of this case (the "Scheduling Proposal") by April 12, 2013, which is discussed below. *See infra* at 2.

We also write to advise the Court that, as of January 24, 2013, the mortgage at issue in this action (the "Mortgage") was assigned to Colony. *See* Ex. A. Colony, as the mortgagee, is therefore an insured under the Loan Policy of Title Insurance in question (the "Policy"). *See* Ex. B at FID00000125 (defining insured under the Policy as the "owner of the indebtedness secured by the insured mortgage"). Colony will be prepared to file a motion to intervene in this action pursuant to Federal Rule of Civil Procedure 24 by April 30, 2013. In the meantime, Colony intends to pursue settlement discussions with Fidelity regarding its anticipated claims.

In addition, in light of Plaintiff Midland Loan Services, Inc.'s ("Midland") dismissal of its claims against Bank of America and the assignment of the Mortgage to Colony, Bank of America intends to withdraw certain of its third-party claims against Third-Party Defendant Fidelity National Title Insurance Company ("Fidelity"), except to the extent those claims relate to Fidelity's obligation to reimburse Bank of America for its attorneys' fees and costs in defending against Midland's first-party claims. Fidelity has previously acknowledged its duty to defend Bank of America against Midland's claims. *See* Ex. C. Accordingly, going forward, the only claim to be resolved between Bank of America and Fidelity is Bank of America's

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claim under the Policy for its attorneys' fees and costs in defending against Midland's claims. Bank of America is waiting for a settlement proposal from Fidelity.

Bank of America proposes the following schedule for the remaining phase of this case:

- Deadline for Colony to file its motion to intervene: April 30, 2013
- Fact discovery (including fact witness depositions) deadline: July 26, 2013
- Expert disclosures and exchange of expert reports due: August 2, 2013
- Expert discovery (including expert depositions) deadline: August 30, 2013
- Pre-motion letters regarding summary judgment due: September 13, 2013
- Joint Pretrial Order due: September 30, 2013

We have conferred with counsel for Fidelity concerning this Scheduling Proposal, and, as best we understand their position, Fidelity does not want to agree at this point to any dates with respect to any claims that would result if the Court permits Colony to intervene. We suggested that Fidelity reserve their right to request a modification of the schedule, but counsel for Fidelity rejected that suggestion. As best we understand it, Fidelity does not object to this Scheduling Proposal to the extent it relates to Bank of America's claim against Fidelity.

Respectfully Submitted,



Gregory A. Markel

Attachments

cc: Jonathan B. Nelson, Esq.  
Jessica J. Kastner, Esq.